IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.315 OF 1995

Aba Rama Satpute]
Occ: Agriculturist]
R/o Marapur, Tal.Mangalwedha]..Appellant
(Ori.Complainant)

Versus

1. Jagannath Vithoba Satpute]
2. Arjun Jagannath Satpute]
3. Anna jagannath Satpute]
4. Dharma Jagannath Satpute]
5. Vikram Jagannath Satpute]
6. Shalan Jagannath Satpute]
7. Shaku Arjun Satpute]
All r/o Narapur, Tal.]
Mangalwedha Dist.Solapur]
8. State of Maharashtra]..Respondents
(Ori.Accused)

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Mr.Indrajeet Kulkarni, Advocate for the Appellant
Mr.B.R.Patil, Incharge P.P. for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 21,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-original complainant challenges the judgment and order dated 30th June, 1994 passed by the learned Judicial Magistrate F.C.Mangalwedha, in Regular Criminal Case No.45 of 1990. By the said judgment and order, the learned Magistrate has acquitted all the accused

i.e. respondent nos.1 to 7 of the offences under Sections 324 and 447 r.w. 34 of IPC.

2. Briefly stated the case of the complainant is as under:

. The complainant Aba Rama Satpute (P.W.1) has an agricultural land at Marapur in Solapur. The agricultural land of the accused persons is adjoining the land of the complainant. On account of the pipeline and bundh, the relations between the complainant and the accused persons became strained and hence, they were on inimical terms. Accused nos.2 to 5 are the sons of accused no.1 and 6, and accused no.7 is the wife of accused no.2. (For the sake of convenience, they shall be referred to by 'the original accused number' instead of respondent number). On the date of incident i.e. on 10.5.1990 at about 5 p.m. witness no.2 for the complainant, i.e. Namdeo Satpute was clearing the bushes on the complainant's land. At that time, accused entered into the complainant's land and raised quarrel with Namdeo on the ground of clearing out the bushes. At that time, accused nos.1 to 5 were carrying sticks and iron bar in their hands. Accused nos. 2 to 5 assaulted Namdeo by stick and iron bars and he

suffered injuries on his head and hands. Accused nos.6 and 7 pelted stones. At that time, complainant and other witnesses rushed to the spot of the incident. Then accused nos.1 and 2 assaulted the complainant by iron bars and sticks and the other accused also beat the complainant. The complainant suffered injuries on his head, shoulder and ear. Accused no.2 assaulted witness No.2 Nana Satpute by stick blows. Due to which, Nana had suffered injuries on his shoulder. It is the case of the complainant that he went to Mangalwedha Police Station and lodged his complaint. On the next day, the Medical Officer treated the complainant and witness Namdeo Satpute. As the police have not investigated the offence properly, the complainant filed the private complaint on 4.6.1990.

3. The process came to be issued against the accused under Sections 324 and 447 r.w. 34 of IPC. Thereafter, the charge (Exhibit-41) came to be framed against the accused. It was read over and explained to all the accused to which, all the accused pleaded not guilty and claimed to be tried. The defence of the accused is that of denial and false involvement due to previous enmity.

4. During the trial, in all the complainant examined five witnesses. The complainant Aba Satpute is the witness No.1. It is the complainant's case that witness No.2 Nana and witness No.3 Namdeo are the injured witnesses. The evidence of witness No.4 Nalu Satpute and witness No.5 Archana Satpute is of no use as they have arrived at the spot after the incident was over. After going through the evidence adduced by the complainant, the learned Magistrate has acquitted all the respondents nos. 1 to 7 i.e. all the accused of the offences with which they were charged. Hence, this appeal.

5. I have heard Mr.Indrajeet Kulkarni for the appellant-original complainant and learned Public Prosecutor for the State. None appears for the respondent nos.1 to 7-accused though served. I have carefully perused the record pertaining to the present case and this appeal is being disposed of on merits.

6. After going through the evidence adduced by the complainant, I am constrained to observe that I have great doubt regarding the claim of the complainant and witnesses that they were injured in the incident. The learned Magistrate has acquitted the

respondent nos.1 to 7 mainly on three grounds viz. first ground is that there is delay in lodging the complaint, second is that the Doctor has not been examined nor any medical certificates have been produced by any of the witnesses for the complainant to corroborate their claim of having beaten and injured on that day during the incident and the third ground is that no weapons have been produced. Looking to all these facts, the learned Magistrate has acquitted the respondent nos.1 to 7. Looking to the facts of the present case, it cannot be said that the view taken by the learned Magistrate was not a plausible or possible view.

7. The incident in the present case was taken place on 10.5.1990 and the complaint came to be lodged only on 4.6.1990. Though the complainant has deposed that after the incident he went to Mangalwedha Police Station and lodged his complaint, however, the complainant has neither filed his complaint nor proved the same. There is no corroboration to the complainant’s evidence that he went to Mangalwedha Police Station and lodged his complaint and waited for about a month for the police to take cognizance of his complaint. In the present case, it is an admitted fact that there was enmity between the accused persons and the

complainant. In view of the delay in lodging the complaint and there being no material to show that indeed the complainant had lodged his complaint on the date of the incident, I am of the opinion that the observation of the learned Magistrate that there was sufficient time for concocting the false complaint involving the accused falsely, cannot be faulted.

8. Though all the three witnesses i.e. complainant and witnesses Nana and Namdeo claimed that they were injured in the incident, none of them have examined the Doctor or produced medical certificates. Moreover, the complainant had deposed that he suffered injuries on his chest. Witness no.2 Nana and witness No.3 Namdeo are silent on this point. So also, though the complainant has deposed that accused nos.2 to 5 assaulted Nana and Namdeo, witness Nana is silent on this point. Thereafter, witness Nana has deposed that accused nos.1 and 2 assaulted witness Namdeo by sticks and Namdeo suffered bleeding injury on his head. However, the evidence of Namdeo himself is silent on this point. Looking to the fact that there was enmity between the accused and the complainant and the fact that there was delay in lodging the F.I.R., no Doctor has been examined nor any injury certificates have been

produced, nor the weapons were produced in this case, the learned Magistrate has acquitted the accused.

9. The present appeal is an appeal against acquittal. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity. I am referring to only one of them i.e. **A.I.R. 1971 Supreme Court 66 (Khedu Mohtan and Another Vs. State of Bihar).**

10. As stated earlier, looking to the contrary evidence of the witnesses and the fact that no Doctor has been examined nor any certificates have been produced nor any weapons were produced, the case under Section 324 of IPC cannot be said to be made out against the accused persons. This would mean that only the offence under Section 447 read with Section 34 of IPC remains. The offence under Section 447 of IPC is punishable with imprisonment which may extend to three months and fine which may extend to Rs.500/- or with both. Looking to the fact that there is delay in lodging the F.I.R. and

other facts and circumstances of this case, it cannot be said that complainant has adduced reliable evidence to prove the offence under Section 447 of IPC. Apart from this, one cannot loose sight of the fact that the impugned order of acquittal was passed on 30.6.1994. More than ten years have elapsed since then. Hence, I am of the opinion that in petty offences like the one under Section 447 of IPC, on account of efflux of time also, it would not be proper to disturb the order of acquittal.

11. In the circumstances, I find no substance in this appeal and the same is dismissed.

[V.K.TAHILRAMANI.J]